

(i) Do not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);—

(ii) Do not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);—

(iii) Do not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);—

(iv) Do not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(A) Major group code 10 (except 1011, 1081, and 1094).

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, *et seq.*), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(v) Are not located in the United States and its outlying areas.

(b) A determination that it is not practicable to include the solicitation provision at 52.223-13, Certification of Toxic Chemical Release Reporting, in a solicitation or class of solicitations shall be approved by a procurement official at a level no lower than the head of the contracting activity. Prior to making such a determination for a solicitation or class of solicitations with an estimated value in excess of \$500,000 (including all options), the agency shall consult with the Environmental Protection Agency, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxic Substances (Mail Code 7408), Washington, DC 20460.—

(c) Award shall not be made to offerors who do not certify in accordance with paragraph (a) of this section when the provision at 52.223-13, Certifi-

cation of Toxic Chemical Release Reporting, is included in the solicitation. If facilities to be used by the offeror in the performance of the contract are not subject to Form R filing and reporting requirements and the offeror fails to check the appropriate box(es) in 52.223-13, Certification of Toxic Chemical Release Reporting, such failure shall be considered a minor informality or irregularity.

(d) The contracting officer shall cooperate with EPA representatives and provide such advice and assistance as may be required to aid EPA in the performance of its responsibilities under E.O. 13148.

(e) EPA, upon determining that a contractor is not filing the necessary forms or is filing incomplete information, may recommend to the head of the contracting activity that the contract be terminated for convenience. The head of the contracting activity shall consider the EPA recommendation and determine if termination or some other action is appropriate.

[60 FR 55307, Oct. 30, 1995, as amended at 61 FR 41474, Aug. 8, 1996; 65 FR 46058, July 26, 2000; 68 FR 28083, May 22, 2003. Redesignated and amended at 68 FR 43869, July 24, 2003]

23.906 Solicitation provision and contract clause.

Except for acquisitions of commercial items as defined in part 2, the contracting officer shall—

(a) Insert the provision at 52.223-13, Certification of Toxic Chemical Release Reporting, in all solicitations for competitive contracts expected to exceed \$100,000 and competitive 8(a) contracts, unless it has been determined in accordance with 23.905(b) that to do so is not practicable; and

(b) When the solicitation contains the provision at 52.223-13, Certification of Toxic Chemical Release Reporting, insert the clause at 52.223-14, Toxic Chemical Release Reporting, in the resulting contract, if the contract is expected to exceed \$100,000.

[60 FR 55307, Oct. 30, 1995, as amended at 61 FR 41474, Aug. 8, 1996. Redesignated and amended at 68 FR 43869, July 24, 2003]